

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING
SESSION--DIVISION OF WATER QUALITY
APRIL 21, 2005

ITEM 9

SUBJECT

~~PUBLIC HEARING~~ TO CONSIDERATION OF- ADOPTION OF THE PROPOSED AMENDMENTS TO THE CALIFORNIA OCEAN PLAN (OCEAN PLAN): (1) REASONABLE POTENTIAL, DETERMINING WHEN CALIFORNIA OCEAN PLAN WATER QUALITY-BASED EFFLUENT LIMITATIONS ARE REQUIRED, AND (2) MINOR CHANGES TO THE AREAS OF SPECIAL BIOLOGICAL SIGNIFICANCE (ASBS) AND EXCEPTION PROVISIONS

DISCUSSION

On April 6, 2005, the State Water Resources Control Board (State Water Board) held a public hearing to consider the proposed amendments to the Ocean Plan regarding Reasonable Potential and minor changes to the ASBS and exception provisions, and to consider the draft Final Functional Equivalent Document (FFED) for those amendments. The following is a brief description of the amendments.

Reasonable Potential Issue (Issue 1)

The ~~State Water Resources Control Board~~ (State Water Board) held two public scoping meetings on January 23, 2004 and February 3, 2004 in regard to the reasonable potential issue. At the October 6, 2004 State Water Board Workshop, staff received written and verbal public comments on the reasonable potential issue. At that same Workshop, staff announced that a scientific peer review would be conducted on the reasonable potential issue. That scientific peer review is now complete.

Chapter III, Section G(2) of the 2001 Ocean Plan allows the Regional Water Quality Control Boards (Regional Water Boards) to not require waste discharge requirement compliance monitoring if dischargers submit periodic certification that Table B pollutants are not added to their waste stream. This certification *in lieu* of monitoring language results in ocean discharge National Pollutant Discharge Elimination System (NPDES) permits that have numeric effluent limitations, yet the discharger is not required to monitor for the limited pollutant. This lack of monitoring data makes it impossible to demonstrate compliance with current Table B water quality objectives or future proposed water quality objectives. In contrast, federal NPDES regulations (40 CFR 122.44) require permitting authorities to conduct a reasonable potential analysis to determine when water quality-based effluent limitations are required. Although a reasonable potential analysis may reduce the number of effluent limitations in a permit, dischargers must monitor for and maintain compliance with all limited pollutants.

The proposed Ocean Plan amendment will remove the section G(2) language and add general reasonable potential language in the Program of Implementation part of the Ocean Plan. In addition,

a detailed procedure for conducting a reasonable potential assessment will be added to a new Appendix VI of the Ocean Plan. This new appendix will increase consistency among Regional Water Boards when conducting the reasonable potential analysis. The general reasonable potential statement to be added to the Ocean Plan Program of Implementation is as follows:

If the Regional Water Board determines, using the procedures in Appendix VI, that a pollutant is discharged into Ocean Waters at levels which will cause, have the reasonable potential to cause, or contribute to an excursion above ~~any a~~ Table B water quality objective, the Regional Water Board shall incorporate a water quality-based effluent limitation in the Waste Discharge Requirement for the discharge of that pollutant.

The ~~new~~proposed new Appendix VI of the Ocean Plan contains steps to be followed to determine if an effluent discharge has the reasonable potential to exceed a Table B water quality objective, after accounting for dilution and background seawater concentrations. One of three possible outcomes or *endpoints* will occur when following the Appendix VI steps: *Endpoint 1* – a limit is required for the pollutant, *Endpoint 2* – an effluent limit is not required for the pollutant, or *Endpoint 3* – the reasonable potential analysis is inconclusive and an existing effluent limit remains in the permit. *Endpoints 1* and *3* will require effluent discharge monitoring according to the monitoring schedule in Appendix II of the Ocean Plan.

ASBS Issue (Issue 2)

Assembly Bill (AB) 2800 (Chapter 385, Statutes of 2000), the Marine Managed Areas Improvement Act, was approved by Governor Davis on September 8, 2000. This law added sections to the Public Resources Code (PRC) that are relevant to ASBS. Section 36700(f) of the PRC defines a state water quality protection area (SWQPA) as “a nonterrestrial marine or estuarine area designated to protect marine species or biological communities from an undesirable alteration in natural water quality, including, but not limited to, areas of special biological significance that have been designated by the State Water Resources Control Board through its water quality control planning process.” Section 36710(f) of the PRC stated: “In a state water quality protection area point source waste and thermal discharges shall be prohibited or limited by special conditions. Nonpoint source pollution shall be controlled to the extent practicable. No other use is restricted.” The classification of ASBS as SWQPAs went into effect on January 1, 2003 (without State Water Board action) pursuant to Section 36750 of the PRC.

Senate Bill (SB) 512 (Chapter 854, Statutes of 2004) amended the marine managed areas portion of the PRC, effective January 1, 2005, to clarify that ASBS are a subset of SWQPAs and require special protection as determined by the State Water Board pursuant to the Ocean Plan and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (Thermal Plan). Specifically, SB 512 amended the PRC section 36700(f) definition of SWQPAs to add the following: “Areas of special biological significance are a subset of state water quality protection areas, and require special protection as determined by the State Water Resources Control Board pursuant to the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water

Code and pursuant to the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board.”

Section 36710(f) of the PRC was also amended as follows: "In a state water quality protection area, waste discharges shall be prohibited or limited by the imposition of special conditions in accordance with the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) and implementing regulations, including, but not limited to, the California Ocean Plan adopted and reviewed pursuant to Article 4 (commencing with Section 13160) of Chapter 3 of Division 7 of the Water Code and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan) adopted by the state board. No other use is restricted." This language replaced the prior wording stating that point sources into ASBS must be prohibited or limited by special conditions and that nonpoint sources must be controlled to the extent practicable. In other words, the absolute discharge prohibition in the Ocean Plan stands, unless of course an exception is granted.

Established according to AB 2800, the State Interagency Coordinating Committee has already acted, under authority of the PRC, to rename certain Marine Protected Areas (MPAs) and other Marine Managed Areas (MMAs), including ASBS/SWQPAs, to be consistent with the entire system of MMAs in the State’s ocean and estuarine waters. Furthermore, the State Fish and Game Commission has adopted these name changes for certain MPAs. It is therefore important to change the names of those ASBS that physically coincide with those MPAs and other MMAs. Thus, the amended Ocean Plan would acknowledge and be consistent with the PRC and the classification system of other State agencies.

The classification of ASBS as a subset of SWQPAs does not change the ASBS designated use for these areas. Practically speaking, this means that waste discharges to ASBS are prohibited under the Ocean Plan and Thermal Plan unless an exception is granted. The Ocean Plan’s provisions on ASBS are consistent with PRC Section 36710(f), which states that waste discharged into SWQPAs “shall be prohibited or limited by the imposition of special conditions...”

Under the 2001 Ocean Plan, point source discharges to ASBS/SWQPAs are allowed only if the State Water Board grants an exception to the discharge prohibition. Currently, only five dischargers have NPDES permits and have been granted Ocean Plan exceptions contingent upon compliance with permit conditions. Four of these were issued prior to 1991 and included exceptions for the US Navy (San Clemente Island ASBS, Los Angeles Region) and (San Nicolas Island ASBS, Los Angeles Region), the Carmel Sanitary District (Carmel Bay ASBS, Central Coast Region), and the Humboldt County Resort Improvement District No. 1 at Shelter Cove (Kings Range National Conservation Area ASBS, North Coast Region). On July 22, 2004, Scripps Institution of Oceanography was granted the fifth exception (Resolution No. 2004-0052) covering all its discharges into the San Diego Marine Life Refuge ASBS (San Diego Region). This exception included the strictest conditions, including comprehensive monitoring requirements, of any other exception to date, assuring the protection of beneficial uses in the ASBS/SWQPA.

The State Water Board has the authority to revoke or re-open any exception if there is evidence that beneficial uses are not being fully protected. In WHEREAS number 19 of Resolution No. 2004-0052, the State Water Board determined that “The exception will be reviewed during the Triennial Review of the Ocean Plan. If the State Board finds cause to revoke or re-open this exception, it may do so during the Triennial Review or at any other time that it so desires.” Future exceptions will be drafted to include the same language. The Triennial Review is the logical and efficient milestone to review all exceptions to assure that beneficial uses are being protected. It is important to clearly state this in the Ocean Plan. In addition, a clear listing of current exceptions should also be included in each new Ocean Plan, in a proposed new Appendix VII.

POLICY ISSUE

Should the State Water Board adopt the proposed Ocean Plan amendments to:

1. Delete the existing Ocean Plan language in Chapter III, Section G(2) that allows discharger certification *in lieu* of monitoring and add general reasonable potential language in Chapter III Section C of the Ocean Plan, and add the reasonable potential analysis procedure language in a new Ocean Plan Appendix VI?
2. Incorporate the Classification of ASBS as SWQPAs, according to the PRC, rename certain ASBS to coincide with name changes in other corresponding MPAsMMAs, clarify that all exceptions are subject to Triennial Review, and add a new Appendix VII with a Table VII –1 listing exceptions to the Ocean Plan?
3. Approve the Final Functional Equivalent Document as part of the attachment to the resolution?
4. Authorize the Executive Director or designee to sign the Certificate of Fee Exemption?
5. Authorize staff to submit the amended Ocean Plan to the Office of Administrative Law (OAL) and the U.S. Environmental Protection Agency (USEPA) for final approval?

FISCAL IMPACT

Regional Water Board and State Water Board staff work associated with or resulting from this action can be accomplished within budgeted resources.

REGIONAL WATER BOARD IMPACT

Yes, – all coastal Regional Water Boards.

STAFF RECOMMENDATION

That the State Water Board:

1. Deletes the existing Ocean Plan language in Chapter III, Section G(2) that allows discharger certification *in lieu* of monitoring and adds general reasonable potential language in Chapter III Section C of the Ocean Plan, and adds the reasonable potential analysis procedure language in a new Ocean Plan Appendix VI.
2. Incorporates the Classification of ASBS as SWQPAs, according to the PRC, renames certain ASBS to coincide with name changes in other corresponding MPAsMMAs, clarifies that all exceptions are subject to Triennial Review, and adds a new Appendix VII with a Table VII – 1 listing exceptions to the Ocean Plan.
3. Approves the Final Functional Equivalent Document as part of the attachment to the resolution.
4. Authorizes the Executive Director or designee to sign the Certificate of Fee Exemption.
5. Authorizes staff to submit the amended Ocean Plan to OAL and USEPA for final approval.

Policy:
Legal:
Fiscal:

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005-

ADOPTION OF THE PROPOSED AMENDMENTS TO
THE CALIFORNIA OCEAN PLAN
(OCEAN PLAN)

WHEREAS:

1. The Ocean Plan was adopted by the State Water Resources Control Board (State Water Board) in 1972 and amended in 1978, 1983, 1988, 1990, 1997, and 2001.
2. The State Water Board is responsible for reviewing Ocean Plan water quality standards and for modifying and adopting standards in accordance with Section 303(c)(1) of the federal Clean Water Act and Section 13170.2 of the California Water Code (CWC).
3. The State Water Board held scoping meetings regarding four potential Ocean Plan amendments on January 23, 2004 and February 3, 2004. These included the following proposed revisions: a) Choice of Indicator Organisms for Water-Contact Bacterial Standards, b) Establishing a Fecal Coliform Standard for Shellfish Harvesting Areas, c) Reclassifying Areas of Special Biological Significance (ASBS) to State Water Quality Protection Areas (SWQPAs) and establishing implementation provisions for discharges into SWQPAs, and d) Reasonable Potential: Determining the likelihood that the concentration of a pollutant would cause or contribute to an exceedance of water quality standards.
4. The State Water Board held a public hearing for the Triennial Review of the Ocean Plan on May 24, 2004 to receive additional public comment on other potential revisions of the Ocean Plan.
5. The State Water Board prepared and circulated a draft Functional Equivalent Document (FED) in accordance with the provisions of the California Environmental Quality Act and Title 14, California Code of Regulations 15251(g). The draft FED addressed Water-Contact Bacterial Standards and Reasonable Potential.
6. The State Water Board held a public hearing in Sacramento on October 6, 2004. The State Water Board received comments on the proposed bacterial and reasonable potential amendments. Staff informed the Board that the reasonable potential issue needed to undergo an external scientific peer review, pursuant to California Health and Safety Code section 57004. The State Water Board also determined that the bacterial issue needed more consideration and deferred a decision until the January 2005 workshop.
7. On January 20, 2005, the State Water Board adopted the modified bacterial water quality objectives for ocean waters in Chapter II, Section B of the Ocean Plan.
8. The State Water Board has received and considered the results of two external scientific peer reviews of the reasonable potential proposal ~~have determined.~~ The peer reviews indicate that the proposed rule is based upon sound scientific knowledge, methods, and practices. ~~State Water Board staff has carefully considered the peer reviewer comments.~~
9. Assembly Bill 2800 (Chapter 385, Statutes of 2000) added sections to the Public Resources Code (PRC) that are relevant to ASBS, including Section 36750 of the PRC, which classified ASBS as SWQPAs as of January 1, 2003 without State Water Board action.
10. Senate Bill 512 (SB) (Chapter 854, Statutes of 2004) amended the marine managed areas portion of the PRC, effective January 1, 2005, to clarify that ASBS are a subset of SWQPAs and require special protection as determined by the State Water Board pursuant to the Ocean Plan and the Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California (California Thermal Plan).
11. The classification of ASBS as a subset of SWQPAs does not change the ASBS designated use for these areas. Waste discharges to ASBS are still prohibited under the Ocean Plan unless an exception is granted.
12. After consideration of public comments received at the scoping meetings and based on SB 512, the State Water Board now proposes only minor changes to the Ocean Plan regarding ASBS and exceptions.

13. The State Water Board staff has prepared a Final FED, covering the reasonable potential and the ASBS and exception issues, which is an Attachment to this resolution. The Final FED includes the specific proposed amendments to the Ocean Plan. The State Water Board has carefully considered all testimony and comments received on these issues.
14. On April 6, 2005, the State Water Board held a public hearing to consider the draft Final FED, the amendments regarding ASBS and exceptions, and changes in the reasonable potential amendments since the October 6, 2004 public hearing.
15. Amendments to the Ocean Plan do not become effective until approved by the Office of Administrative Law (OAL) and the U.S. Environmental Protection Agency.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Deletes the existing Ocean Plan language in Chapter III, Section G(2) that allows discharger certification *in lieu* of monitoring and adds general reasonable potential language in Chapter III Section C of the Ocean Plan, and adds the reasonable potential analysis procedure language in a new Ocean Plan Appendix VI, [as shown on the Attachment to this Resolution](#).
2. Incorporates the Classification of ASBS as SWQPAs, according to the PRC, renames certain ASBS to coincide with name changes in [other](#) corresponding Marine [Protected/Managed](#) Areas, clarifies that all exceptions are subject to Triennial Review, and adds a new Appendix VII with a Table VII-1 listing exceptions to the Ocean Plan, [as shown on the Attachment to this Resolution](#).
3. Approves the Final FED attached to the resolution.
4. Authorizes the Executive Director or designee to sign the Certificate of Fee Exemption.
5. Authorizes staff to submit the amended Ocean Plan to the Office of Administrative Law and the USEPA for final approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 21, 2005.

Debbie Irvin
Clerk to the Board